

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1486 OF 1983

Omana Purushottaman Nair, widow of)
late K.R. Purushothaman Nair,)
residing at S. Shubam Karoti,)
8th Road, Chembur, Bombay - 400n 071.)...Plaintiff

V/s.

1. Life Insurance Corporation of)
India, a statutory Corporation)
established under Life Insurance)
Corporation Act, 1956, having its)
main Office at Yogakshema,)
Churchgate Reclamation, Bombay.)
)
2. Union of India, through)
The Secretary, Finance Ministry,)
New Delhi.)...Defendants

Ms.Nipa Pandya i/b.Mahesh Menon for Plaintiff.

Mr.R.C. Shah i/b. Little & Co. for Defendants.

CORAM : A.S. AGUIAR, J.
DATED : OCTOBER 20/21, 2004.

ORAL JUDGMENT :-

1. The plaintiff, the widow of one K.R. Purushothaman Nair who died on 21st May, 1981 in a motor car accident has filed this suit claiming a sum of Rs.98,934/- together with interest thereon at the rate 12% p.a. on Rs.80,000/- being the amount payable on the

Insurance Policy bearing No.16933974 (Double Accident Benefit) which was taken by the said deceased Purushothaman prior to his death from the defendants Insurance Company as per particulars of Claim, Exhibit 'G' to the plaint.

2. The plaintiff has also prayed for declarations as set out in prayer clauses (a) and (b) in view of the fact that the defendants have disclaimed liability under the said policy contending that in fact there was no contract pursuant to the proposal for insurance made by the plaintiff since the proposer expired prior to the proposal being accepted by the defendants.

3. It is the case of the plaintiff that her husband K.R. Purushothaman Nair, who expired on 21st May, 1981 had applied for Life Insurance Policy by submitting a proposal form alongwith cheque of Rs.421/- by postdated cheque of 2nd May, 1981. The proposal form was filled in by the Development Officer of defendant no.1 one D.N. Vora. The proposal and cheque of Rs.421/- was accepted by defendant no.1 and a receipt bearing No.169038 dated

2nd May, 1981 was issued. It is at Exhibit-A to the plaint and Exhibit P-5 before the Court. After the death of her husband, the plaintiff found the Receipt among the papers of her husband and immediately deputed her relative Shri P.S. Nair to do the needful. According to the plaintiff, at the time of death of her husband, she was bearing his child of five months. That she came to know about the L.I.C. policy taken by her husband only when she found the Receipt among his papers. She further states that the defendant Corporation had sent a communication dated 22nd June, 1981 mentioning the particulars of the policy, and by her reply dated 27th July, 1981, she intimated the defendant Corporation about the demise of her husband in an accident. Since there was no response from the defendant Corporation for some time, the plaintiff wrote a letter dated 4th December, 1981 requesting the Chairman to settle her claim. Thereafter, the plaintiff received a letter from the Bombay Divisional Officer of defendant Corporation, dated 4th February, 1982 intimating her that the first premium receipt had been cancelled and further disclaiming liability in respect

of the above proposal except to the extent of Rs.421/- paid as first instalment under the proposal.

4. It is the contention of the plaintiff that the defendant Corporation in its reply dated 4th February, 1982 has falsely stated that the proposal dated 20th April, 1981 was received by them only on 19th May, 1981 alongwith the passport and that in view of the nature of age proof submitted by her late husband, Plan 14-24 and not 14-29 was permissible. The said letter of the defendant Corporation has also falsely stated that on 6th June, 1981 fresh age proof was given even though the assured i.e. her husband had expired on 21st May, 1981, and lastly, that the defendant Corporation had falsely and dishonestly stated that the life assured had expired long before the proposal. The said letter dated 4th February, 1982 is at Exhibit-F to the plaint and Exhibit P-10 before the Court.

5. The plaintiff had filed a petition before this Court being Writ Petition No.701-1982 praying for declarations as set out in the prayer clause to the

plaint hereto. The said petition was dismissed with liberty to the petitioner to file a suit. Hence, the present suit is filed by the plaintiff claiming declarations sought and for payment of the amount claimed under the Double Accident Benefit Policy.

6. It is the contention of the plaintiff that the categorisation of age proof by the plaintiff into standard and non-standard age proof is bad in law ultravires and null and void and that the contract of insurance comes into existence even without proof of age and that proof of age becomes relevant only if the insured had misrepresented his age. In the event of any misrepresentation by the insured, the contract, is voidable at the instance of Insurance Company. It is the case of the plaintiff that defendant had accepted the proposal of the plaintiff's husband insuring his life for the sum of Rs.40,000/- (payable with Double Accident Benefit) and since the proposal was submitted and the amount of premium paid, a concluded contract came into existence. Hence, the defendant is bound and liable to pay the amount of policy on the occurrence of

death of the policy holder. It is, thus, submitted that the defendant no.1 is bound and liable to pay the amount assured to the plaintiff who is the widow and nominee under the policy and that she is, therefore, entitled to a declaration that the cancellation of policy is bad in law and null and void. According to the plaintiff, the deceased has submitted his passport as proof of age which has been accepted by the defendant Corporation and hence, the Corporation is bound and liable to pay the amount which has become due under the said policy on the death of her husband.

7. Defendants have filed their written statement disclaiming their liability on the ground that when the Divisional Officer of Defendant No.1 processed the proposal on or about 12th June, 1981, they were not aware of the demise of deceased which admittedly took place on 21st May, 1981. Defendants were deliberately not informed that Purushothaman Nair had expired on 21st May, 1981. The suppression of this fact by the plaintiff resulted in the defendants accepting the proposal in the absence of the knowledge that the

deceased had expired on 21st May, 1981. It is submitted by the defendants that the acceptance of the proposal, the adjustment of the amount of premium on 26th June, 1981 and allotment of policy no.16933974 and issue of acceptance-cum-premium receipt with risks commencing from 22nd June, 1981 by the defendants, were all done subsequent to the date of death of the deceased and thus, there was no valid acceptance of the proposal insuring the life of the deceased. The defendants have in their written statement denied that there is a valid and concluded contract of insurance as alleged and that the defendants had accepted the proposal before the date of death of the deceased. On the basis of the pleadings as aforesaid, this Court has framed issues which are as follows :-

1. Whether the plaintiff is the widow of K.R. Purshothaman Nair as stated in paragraph 1 of the plaint?
2. Whether the plaintiff proves that the defendant

No.1 accepted the proposal bearing No.1406935 of the deceased on his life before the death of the deceased as stated in paragraph 4 of the plaint?

3. Whether the plaintiff proves that there exist a valid contract between the plaintiff and defendant No.1?
4. Whether the plaintiff proves that categorization of age proof by the defendants into standard and non-standard age proof is bad in law and contract of issuance comes into existence even without age proof as stated in paragraph 11 of the plaint?
5. Whether the defendant No.1 is liable to pay to the plaintiff the amount under Policy No.16933974 as stated in paragraph 11 of the plaint?
6. What relief/order?

8. In support of her case, the plaintiff has examined herself and relied upon documents which are exhibited as 'P-3' to 'P-10' while the defendants have not lead any evidence. Plaintiff in support of her case has referred to document, Exhibit-5 which is described as Suspense Memorandum dated 2nd May, 1981. Reference is made to the statement in the said Memorandum which is as follows :-

"Payment as shown alongside has been received and held in suspense. If the payment is found in order, the amount will be adjusted and the Corporation's official receipt issued."

The amount received under the Suspense Memorandum is Rs.471/- which includes a sum of Rs.421/- towards first premium and other misc.charges.

9. It is the contention of the learned Advocate for the plaintiff that the Suspense Memorandum constitute a concluded contract of Insurance since defendant no.1 has

accepted the first premium effective from the date of receipt i.e. 2nd May, 1981 and that subsequently, Acceptance letter-cum-first premium Receipt has been issued which is at Exhibit P-7, confirming the acceptance of the proposal and therefore, there is a concluded contract of insurance effective from the date of payment of the premium i.e. 2nd May, 1981.

10. On the other hand, learned Advocate for Insurance Company has relied upon the said Acceptance letter-cum-first premium Receipt, Exhibit P-7 to show that the actual acceptance of the proposal was on 22nd June, 1981 and not on 2nd May, 1981 and therefore, the commencement of the policy would be effective from 22nd June, 1981. It is the contention of the learned Advocate for the defendant no.1 that the proposal which was received by the Branch Office of defendant no.1 on 2nd May, 1981 alongwith payment of the initial amount towards the first premium, was held by the defendant in "suspense account" as the same was an initial payment towards the proposal and received subject to the acceptance of the proposal. The amount would be

appropriated by defendant no.1 only after the proposal was accepted by defendant no.1 and that is why the same is described as "Suspense Memorandum" and not "Acceptance letter". It is pointed out by the defendants that alongwith the proposal, the deceased had submitted his passport as proof of age. The passport falling in the category of non-standard proof of age, the relevant tables applicable would be 11, 14, 18, 19, 20 and 29 with maximum maturity age as 65. When the deceased submitted his proposal, he was 41 years of age and the term of assurance mentioned in the proposal form was 14-29 the applicable Table being 14. Since the deceased was 41 years and the maximum age in respect of non-standard age proof was 65, the proposal of the deceased could not be accepted by the Corporation. The proposal that could be accepted by the Corporation was table 14-24. It is pointed out that from the examination of the plaintiff, it appears that the brother-in-law of the deceased was contacted on 15th May, 1981 and was asked to furnish the School Leaving Certificate (for short "SLC") of the deceased to the defendants. The SLC being a document of standard proof

of age, the proposal of the deceased for 14-29 would have been accepted. In her evidence, plaintiff has stated that the SLC of the deceased was collected by her brother-in-law on 18th May, 1981, However, in her cross-examination the plaintiff has stated that she does not know as to when the SLC was given to defendant no.1 Corporation.

11. It is further pointed out that Exhibit P-7 which is the Acceptance Letter-cum-First Premium Receipt is dated 21st June, 1981 and shows the date of commencement of the policy as 22nd June, 1981 and this would indicate that the SLC was filed on 21st June, 1981 and that is why the defendant accepted the proposal on 22nd June, 1981 and issued a policy bearing No.16933974 on that day. It is pointed out that at the time of acceptance of the proposal by defendant no.1, it was not known to defendant no.1 that the deceased husband of the plaintiff was dead. From the death certificate, it is seen that the deceased died on 21st May, 1981. However, defendants were informed of the death only by letter dated 27th July, 1981. It is further pointed out by the

defendant no.1 that reliance has been placed by the plaintiff on Exhibit 'P-4' in support of the plaintiff's contention that the proposal was accepted before the death of the plaintiff's husband. However, according to the defendants, no reliance can be placed on Exhibit 'P-4' to prove this since the policy number and the date appearing on Exhibit P-4 show that it was issued on 2nd June, 1981 which is subsequent to the death of the deceased. It is also contended that the date of admission viz. 11th May, 1981 in the last column of Exhibit 'P-4' cannot be accepted as the date of acceptance of the proposal since the same has been filled in by the brother-in-law of the deceased on his own.

12. It is the case of the plaintiff that since the proposal made by her deceased husband was for table 14 term 29 (14-29) and he had produced his passport as proof of age and since according to the statutory policy of the Insurance company, the term of 29 years would not be available to the deceased husband i.e. the proposer, the passport being non-standard proof of age, the

plaintiff submitted the SLC certificate of the deceased on 18th May, 1981. However, the defendant no.1 did not take any action immediately thereon and issued the acceptance letter only on 26th June, 1981. According to the defendants, the plaintiff has failed to prove that she had submitted SLC certificate on 18th May, 1981 as she has in cross-examination admitted that she was not able to give the exact date when the certificate was handed over to defendant no. 1. However, the defendants themselves though admitting receipt of the SLC certificate, have lead no evidence as to the date on which they received the said SLC certificate. Defendants have lead no evidence to disprove the plaintiff's statement on oath that the defendant's agent took the SLC from her brother-in-law, P.S. Nair on 18th may, 1981. It is submitted that the death of the proposer was subsequent to the date when the SLC certificate was given to the defendant no.1 and therefore, it became obligatory on the defendants to have issued the acceptance letter for the proposal 14-29 on 18th May, 1981 itself, which they failed to do.

13. It is submitted that even assuming that the SLC certificate which is standard proof, was not submitted prior to the date of the death of the deceased, the fact remains that deceased-husband of the plaintiff had submitted his proposal for a policy of Rs.40,000/- on 20th April, 1981 alongwith his passport. On that date the defendants had also accepted the first premium paid by the proposer. The Suspense Account receipt, Exhibit P-5 dated 2nd May, 1981 states "payment has been received and is held in suspense. If the payment is found in order, the amount will be adjusted and the Corporation's official receipt issued." According to the plaintiff's interpretation, this would mean that if the cheque was encashed and payment received, then receipt would automatically follow. This cannot be interpreted to mean that until plaintiffs submit the standard proof, only then the proposal would be accepted as is sought to be argued by the defendants. It is, therefore, submitted that on 2nd May, 1981 when the proposal was submitted alongwith cheque and received by the defendants, there was a concluded contract of insurance. Since what was submitted on 2nd May was non-standard

proof i.e. passport, the insured would be automatically entitled to the reduced term of the policy of 24 years available in case of production of non-standard proof of age. It is pointed out that from 20th April, 1981 till 15th May, 1981, the defendant no.1 did not call upon the insured to submit standard proof.

14. On the basis of the pleadings and submissions as above, the only issue that requires to be decided is Issue No.2 viz. "Whether the plaintiff proves that defendant no.1 accepted the proposal bearing No.1406935 of the deceased on his life before the death of the deceased as stated in paragraph 4 of the plaint?"

15. It is the contention of the defendants that the receipt of the first instalment of Rs.471/- and the issue of suspense memorandum as also the Acceptance Letter-cum-First Premium Receipt, do not constitute a concluded contract of insurance as in fact no acceptance of the proposal has been communicated to the proposer before the death of the proposer. The acceptance letter-cum-first premium receipt, Exhibit 'P-7' showing

the date of commencement of the insurance as 22nd June, 1981, is issued in the absence of knowledge of the death of the insured viz. K.R. Purushothaman Nair. The Suspense Memorandum which was issued on 2nd May, 1981 i.e. prior to the date of the death of the deceased, also does not amount to acceptance of the proposal as the amount was received in the suspense account and therefore, this does not constitute concluded contract of insurance as there was in fact no acceptance of the proposal. In support, learned Advocate for the defendant no.1 refers to the decision in the case of **Life Insurance Corporation of India V/s. Raja Vasireddy Komalavalli Kamba and Ors.** reported in **AIR 1984 SC 1014** wherein Supreme Court has held as follows :-

"A contract of insurance will be concluded only when the party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer. Though in certain human relationships silence to a proposal might convey acceptance but in the case of insurance proposal, silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance. Mere delay in giving an answer cannot be construed as an acceptance, as, prima facie, acceptance must be communicated to the offeror.

Similarly the mere receipt and retention of premium until after the death of the applicant or the mere preparation of the policy document is not acceptance."

. In the aforesaid case, it was alleged that with full knowledge of the completion of all the preliminaries, the Corporation had encashed the cheque issued towards the first premium and therefore, it was the case of the plaintiffs that the encashment of the cheques amounted in those circumstances in law to an acceptance of the proposal of the deceased. It was further alleged in the said case that the appropriation of the amounts by the Corporation towards first premium by the deceased was only consistent with the acceptance of the proposal. The case of the plaintiff further was that in this case, the premium was not only received by the Corporation completely on 11th January, 1961 but it was also appropriated by it to his accounts and the said premium amount was received by the Corporation without any demur or qualification and that in any event, the Corporation must be deemed to have waived by its conduct the formality, if any, of sending communication of its acceptance of the proposal."

16. In the written submissions filed in the said case on behalf of the defendants, it was denied that the payment of the first premium amounted to acceptance of the proposal. It was the case of the defendant the two cheques were not encashed or credited towards the premium account of the proposal but these were kept only in deposit in suspense account without any liability of the appellant. It was further stated in the said written statement that the averments in the plaint that the defendant Corporation encashed the above two cheques and appropriated the amounts and credited these in the account towards the premium payable for the proposal were false. It was stated that on the death of the deceased the amount covering the two cheques was lying in the deposit and in the suspense account of the Corporation and was not adjusted towards the premium since the proposal was not considered, the terms of acceptance was not fixed and the premium amount required for the proposal was not calculated. In these circumstances, the appellant Corporation disclaimed liability for the risk.

17. The facts of the present case are not very different from those of the aforesaid case decided by the Supreme Court. In the present case, the proposal was made on 20th April, 1981 and the first premium paid on the same day. The defendant no.1 Insurance Company issued its Suspense Memorandum on 2nd May, 1981 indicating receipt of the proposal and the amount paid as first premium. Since the Corporation had accepted the premium amount, it is contended that the contract of insurance had come into existence on 2nd May itself when the suspense memorandum was issued. The Defendant Insurance Company has denied this contending that the proposal could not be accepted as the term of assurance required by the proposer was for the table 14-29 but the proof of age submitted was the proposer's passport which is a non-standard proof of age. Since the proposer was 41 years of age and had requested to pay premium for 29 years and since the maximum maturity age in respect of non-standard age proof is 65 years, the proposer was required to submit standard proof of age such as SLC. However, it is seen that the defendant Corporation has

accepted the proposal after receipt of the SLC certificate of the proposer, plaintiff's husband, and has also communicated its acceptance of the proposal by issuing the Acceptance-cum-first premium Receipt. The plaintiff claims to have submitted the School Leaving Certificate of her husband to the agent of the LIC on 18th May, 1981. The defendants contend that the Acceptance letter was sent in the absence of knowledge about the death of the proposer which was not communicated to the defendants till 27th July, 1981 when plaintiff wrote a letter Exhibit 'P-8' to the Senior Divisional Manager, LIC, India informing the LIC that her husband Mr.K.R.P. Nair had expired on 21st May, 1981. The crux of the matter, therefore, is whether the Corporation had received the S.L.C. certificate on 18th May, 1981 as claimed by the plaintiff or after the death of the deceased insured. The plaintiff has in her examination-in-chief on Affidavit stated as follows :-

"I say that on 15th May, 1981, Bharat Shah (the husband of the agent of the Corporation) had

contacted Mr.Padmanabhan Sivasankaran Nair, the brother-in-law of the deceased for the School Leaving Certificate of the deceased stating that he wanted School Leaving Certificate for verification of the date of birth as shown in the passport and that the said Bharat Shah on 18th May, 1981 called on Mr.P.S. Nair and took away his School Leaving Certificate."

. However, learned Advocate for the defendant has pointed out to the cross-examination of the plaintiff wherein she has stated as follows :-

"I again state that the school leaving certificate was in our shop at Santacruz. I state that I am not in a position to state exactly when school leaving certificate was given to Mr.Bharat Shah and he in turn gave it to the deft. company."

18. Apparently, there is some doubt as to the exact

date on which the SLC was received by the defendant Corporation. The plaintiff has specifically averred in her Examination-in-chief on affidavit as well as in para 4 of the plaint that the said Bharat Shah took away the said SLC on 18th May, 1981. Though the defendants have in their written statement generally denied the contents of para 4, there is no specific denial of the averment in para 4 of the plaint that the SLC was received by their agent Bharat Shah on 18th May, 1981. It is pertinent to note that although the plaintiff has in her evidence in chief specifically stated that the said Bharat Shah had taken SLC on 18th May, 1981, the defendants have not produced any evidence to the contrary nor have the defendant thought it fit to examine any witness to prove the date on which they received the SLC which they could have done by producing their record. Defendants have not explained why they have lead no evidence on this crucial aspect to disprove the averments made by the plaintiff. Since it is the case of the defendants that the said certificate was received by the defendants only in the first week of June, 1981, presumably they are saying so on the basis

of some record, the defendants have failed to produce any records. Defendants have not explained why they have not examined anyone in support of their case that the SLC was received by them only in the first week of June 1981 the defendants have not even denied the specific averment of the plaintiff that the SLC was given by her to the defendant's agent on 18th May, 1981. Hence, an adverse inference is required to be drawn against defendants and it will have to held as proved that the SLC was in fact received by the defendant Corporation on 18th May, 1981 i.e. prior to the death of the proposer on 21st May, 1981.

19. It is pertinent to note that the Acceptance letter indicates that the defendant Insurance company has accepted the table 14 term 29 premiums. This clearly is on the basis of the School Leaving Certificate which was received by the Defendant company on 18th May, 1981. It must therefore necessarily be presumed that the contract of insurance become effective from 18th May, 1981 and not from 22nd June, 1981 as stated in the acceptance letter. In fact, according to

the plaintiff, the contract of Insurance must be held to have retrospectively come into effect from the date when the proposal was submitted (i.e. 20th April, 1981). It must be remembered that the proposal of Insurance alongwith Passport as proof of age was submitted on 20th April, 1981 and the defendants issued their suspense memorandum dated 2nd May, 1981 acknowledgement receipt of a sum of Rs.471/- towards first premium including misc.expenses. This by itself would have amounted to concluded contract but for the Table term of insurance stated in the proposal which was 14-29. However, since the proposer had only submitted his passport, a non-standard proof, the Defendants did not issue the policy requiring the plaintiff to produce standard proof as evidence of age to entitle him to table terms 14-29. The said SLC having been submitted on 18th May, 1981, there was no impediment to concluding the contract of insurance. The delay in communicating the acceptance is on the part of the Insurance company. The insured cannot be made to suffer due to any internal delays and/or defects in the procedure in issuing insurance policy which is a formal expression of contract which

had already come into existence prior to the death of the deceased proposer. It may be pointed out that the Defendants company is carrying on business of assuring lives and claims an exclusive right to do so. The business of Life Insurance consists in providing social security meant for the community. The Corporation must be guided in its dealings with the public with a social sense of justice. It cannot be the Corporation's policy to raise frivolous objections to avoid policy claims. No doubt, the Corporation is governed by statute and the claims are to be processed as per the rules laid down in the Life Insurance Corporation Act. The facts as set out above clearly make out the case that there was a concluded contract of insurance prior to the death of the insured which occurred on 21st May, 1981. The defendants have communicated their acceptance of the proposal, on 26th June, 1981 though they received the SLC certificate from the plaintiff through their agent on 18th May, 1981 i.e. before the death of the proposer. Since there was a concluded contract of insurance as on 18th May, 1981 which was communicated to the plaintiff, albeit belatedly, the defendant Insurance

Company is liable to honour its commitment under the contract of Insurance.

20. In view of the averments in the plaint and written statement and the evidence of the plaintiff, it must be held that the defendants no.1 had accepted the proposal bearing No.1406935 prior to the death of the deceased and hence, issue no.2 is answered in the affirmative. Consequently, issue no.3 is also answered in the affirmative and Issue no.5 as well is answered in the affirmative. Issue no.1 is to be taken as proved in the absence of any evidence to the contrary. Issue no.4 is not required to be answered.

21. The plaintiff is the proposer's widow having a son from the deceased husband, policy holder. Her claim therefore, requires to be granted. In view thereof, there will be decree in terms of prayer clause (c). No order as to costs. Suit to stand disposed of.

(A.S. AGUIAR, J.)